

FILED

JUN 4 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

STEPHEN YUN,

Plaintiff - Appellant,

v.

ETHICON, INC., a New Jersey Corporation,

Defendant - Appellee.

No. 02-15992

D.C. No. CV-00-00487-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted May 16, 2003
San Francisco, California

Before: CANBY, KLEINFELD, and RAWLINSON, Circuit Judges.

We affirm the summary judgment, because Yun's submission did not
establish a genuine issue as to whether contaminated suture material from Ethicon

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by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

caused his infection.¹ At most, Yun was able to show that a genuine issue of fact existed with respect to whether some of the recalled sutures remained at Mercy General Hospital. The declarations and depositions do not support the necessary inferences that contaminated sutures were used in Yun's surgery and caused Yun's infection. Though it is not obvious how Yun could prove causation, he has provided no basis for shifting the burden of proof.

AFFIRMED.

¹ See Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).